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8 JOHN DIAZ, Plaintiff

9  
10 **IN THE US DISTRICT COURT OF CALIFORNIA**

11 **COUNTY OF**

12 JOHN DIAZ,

13 Plaintiff,

14 vs

15 LODI ASSOCIATION OF REALTORS,  
16 CENTRAL VALLEY ASSOCIATION OF  
17 REALTORS, CALIFORNIA ASSOCIATION OF  
18 REALTORS, AND NATIONAL ASSOCIATION  
19 OF REALTORS,

20 Defendants.

Case No. 2:25-CV-01594-DC-CKD

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' REQUEST FOR JUDICIAL  
NOTICE**

**Date: September 5, 2025**

**Time: 1:30 p.m.**

**Courtroom: 8, 13th Floor**

**Judge: Hon. Dena Coggins**

21 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' REQUEST FOR JUDICIAL NOTICE**  
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## I. INTRODUCTION

Plaintiff John Diaz respectfully objects to Defendants' Request for Judicial Notice ("RJN") [ECF No. 16], filed on August 7, 2025 in connection with their Reply in Support of the Motion to Dismiss. The RJN presents new evidence and argumentative assertions for the first time in reply, depriving Plaintiff of a meaningful opportunity to respond, and seeks judicial notice of materials that are not proper subjects under Federal Rule of Evidence 201.

## II. TIMELINESS AND PROCEDURAL BASIS

Federal Rule of Evidence 201(e) provides that "[o]n timely request, a party is entitled to be heard" on the propriety of taking judicial notice. Under Eastern District Local Rule 230(d), oppositions to new matters raised in reply should be filed sufficiently before the hearing—in practice, at least seven days prior. This objection is timely.

The Ninth Circuit has long held that a court should not consider new evidence raised in reply without giving the opposing party an opportunity to respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996). The RJN's exhibits—MetroList and CRMLS rules/forms—are not within the scope Defendants' Motion to Dismiss, or Plaintiff's Opposition and appear for the first time with their reply.

## III. SUBSTANTIVE GROUNDS FOR OBJECTION

### 1. Improper Use of Judicial Notice to Prove Disputed Facts

Judicial notice may be taken of a document's existence and authenticity, but not for the truth of disputed factual assertions contained therein. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Here, Defendants expressly request the Court to notice these materials as "contradicting" Plaintiff's allegations—an argumentative inference, not an indisputable fact.

### 2. Irrelevance to Issues in the Motion

Under FRE 401, the exhibits are irrelevant to the Rule 12(b)(6) analysis, which is confined to the pleadings and matters properly subject to notice. The Complaint does not cite MetroList or CRMLS rules. The RJN's materials address issues first raised in the Opposition in response to Defendants' Motion to Dismiss. Plaintiff mentioned CRMLS and MetroList in his Opposition

1 because of Defendants' assertions that they do not control MLS services, and to further support that  
2 Plaintiff has properly alleged tying, or can in the event an Amended Complaint is necessary.

3 **3. Misleading and Argumentative Content**

4 FRE 201(b) permits notice only of facts that not subject to reasonable dispute. By  
5 embedding the assertion that Plaintiff's statements are "false" or "contradicted" by the exhibits,  
6 Defendants use the RJN as a vehicle for factual argument rather than to establish an adjudicative  
7 fact. In his Opposition and Complaint, the Plaintiff clearly disputes that Realtor membership is  
8 required for various Realtor services, even though Plaintiff's Complaint makes CAR forms the  
9 central issue. Defendants' assertion that the existence of an application and the rules that are stated  
10 does not prove the fact in dispute here, which is that Defendants' control Realtor services, and use  
11 that control for an unlawful antitrust purpose. Plaintiff does not waive his dispute of the relevant  
12 alleged fact(s) regarding MLS services.

13 Further, Defendants' Request may contradict its intentions of proving that membership is  
14 *not* required to join the MLS. Please see Defendants' RJN Exhibit 3, Section 4 (PDF page 4),  
15 showing that while there is a "participant" class listed in the rules, there is also a subscriber class of  
16 MLS users that must be approved by the "AOR" (Association of Realtors). Defendants admit in  
17 their Reply (Doc. 15) that Lodi Association of Realtors (or "LAR") is a shareholder in MetroList,  
18 though they claim that is irrelevant in the same sentence. Plaintiff disputes that, as well as the  
19 Defendants' control over services that Defendants provide and unlawfully tie to membership. And,  
20 even if Defendants are correct, Plaintiff's allegation in his Opposition was that in order for him to  
21 obtain electronic key access to MetroList listings, he has to join Defendant organizations, which is  
22 the relevant assertion by Plaintiff that Defendants do not seem to confront with this Request for  
23 Judicial Notice.

24 **4. Conflation of Fact and Interpretation**

25 The existence of publicly available MLS rules may be judicially noticeable, but whether  
26 those rules establish that Realtor membership is not required for access to Realtor services is a  
27 factual conclusion that is subject to reasonable dispute.

28 **5. Authentication and Reliability Concerns**

1 While Defendants provide URLs, they offer no declaration confirming that the exhibits are  
2 true and correct copies of the cited webpages as they existed at any relevant time. Public website  
3 content is subject to change and requires proper foundation before use for factual determinations.

4 **IV. REQUESTED RELIEF**

5 Plaintiff respectfully requests that the Court:

- 6
- **Deny** Defendants' RJN in its entirety; or, in the alternative,
  - **Limit** judicial notice solely to the fact that the attached documents exist on their respective
- 8 websites, without accepting the truth of any statements or inferences therein.
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10 DATED: August 18, 2025

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12 CHARLES A. HAMM  
13 Attorney for the Plaintiff, John Diaz

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